

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

DARYL L. DAVIS, #802738

§

VS.

§

CIVIL ACTION NO. 9:07cv19

DIRECTOR, TDCJ-CID, ET AL.

§

ORDER OF PARTIAL DISMISSAL

Plaintiff Daryl L. Davis, an inmate previously confined at the Polunsky Unit, proceeding *pro se* and *in forma pauperis*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation concluding that the Plaintiff should be permitted to proceed with his deliberate indifference claims against Lt. Wayne N. Tucker and Officer Michael R. McDuffie and that his remaining claims should be dismissed. The Plaintiff has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Plaintiff to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections of the Plaintiff are without merit.

The Court specifically notes the Plaintiff's objections alleging that the Magistrate Judge refused to consider his affidavits or give them any consideration. The Plaintiff's lawsuit involves allegations that the Defendants were deliberately indifferent with respect to his safety when he was

attacked twice by other inmates in May, 2006. In his objections, the Plaintiff noted that he submitted affidavits from other inmates showing that Gang Intelligence Officers Price, Dezeeuw and Gilbert were aware that there was a possibility that he was going to be attacked, but they failed to take steps to protect him. The Court's review of the affidavits reveal, however, that the officers investigated claims concerning his safety. Inmate Grant noted that he was questioned and he indicated he had heard about threats against the Plaintiff, but he could not confirm them. The facts attributed to the officers do not support an inference that they knew of and disregarded an excessive risk to the Plaintiff's safety, as required in order to proceed against them. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The Plaintiff's objections regarding the recommendation to dismiss Price, Dezeeuw and Gilbert lack merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the Plaintiff may proceed with his deliberate indifference claims against Lt. Wayne N. Tucker and Officer Michael R. McDuffie. It is further

ORDERED that the Plaintiff's claims against the remaining Defendants are **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915A(b)(1).

So **ORDERED** and **SIGNED** this 17 day of **July, 2007**.



Ron Clark, United States District Judge